

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

BARBARA E. VARNER, :
PLAINTIFF, : CIVIL ACTION
VS. : NO. 1:CV 01-0725
COMMONWEALTH OF PENNSYLVANIA, : (JUDGE YVETTE KANE)
NINTH JUDICIAL DISTRICT, :
CUMBERLAND COUNTY; CUMBERLAND :
COUNTY; S. GARETH GRAHAM, :
INDIVIDUALLY; AND JOSEPH :
OSENKARSKI, INDIVIDUALLY, :
DEFENDANTS. :

DEPOSITION OF: THOMAS A. BOYER

TAKEN BY: DEFENDANT OSENKARSKI

BEFORE: SUSAN M. SIMON
REPORTER-NOTARY PUBLIC

PLACE: ADMINISTRATIVE OFFICES OF
PENNSYLVANIA COURTS
5035 RITTER ROAD
MECHANICSBURG, PENNSYLVANIA

DATE: SEPTEMBER 17, 2003
BEGINNING 10:25 A.M.

ORIGINAL

1 That's when I left the unit.

2 Q Okay. Anything else you can think of in terms
3 of Ms. Varner's situation of being certified with the
4 Alcohol Highway Safety course?

5 A I don't know of anything else, unless you have
6 a question or what have you.

7 Q When you -- you said you were surprised
8 that -- or she went, in your opinion, behind your back in
9 order to get certified. Did you ever address that with
10 Ms. Varner at all?

11 A I do not recall directly with Mrs. Varner.

12 Q Did she ever explain to you how she was able
13 to acquire the certification not going through you, which
14 was obviously was the way to go through, the process in the
15 office?

16 A She never did. She never did.

17 Q Seniority. What do you know about seniority,
18 the seniority system with the Juvenile Probation
19 Department?

20 Better yet, let's go back to your first
21 interest of seniority in the Probation Department in
22 general. When was that?

23 A Well, approximately 1982, in the ballpark of
24 1982 to 1983 approximately, at that point being employed by
25 the county four or five years, the county had a very

1 non-sophisticated and very small personnel manual for
2 county employees that covered some rules and regulations
3 and guidelines, et cetera.

4 And it came to my attention back then --
5 that's over 20 years ago -- that the county's policy on
6 seniority was not complete or thorough, and specifically in
7 two areas.

8 When the county addressed seniority, they went
9 to some effort to show the difference between a full-time
10 person and a part-time person. And they would show this
11 specifically in a variety of categories. If you're
12 full-time, this is your longevity. If you're part-time,
13 its longevity. If you're full-time, this is sick leave,
14 this is the holidays. This is this, this is that.

15 But when it came to seniority, they didn't
16 differentiate. I saw that as a flaw in the county policy.

17 The other thing the old county policy said was
18 seniority was based on continuous service in the county.
19 And that was the second flaw that I saw back in the early
20 eighties. Because I could see right then that if push
21 comes to shove, there could be a potential problem here
22 with employees who transferred over to probation from, say,
23 the nursing home or maintenance or wherever.

24 So I addressed my concerns as far as back as
25 the early eighties with my superiors in probation, the

1 county commissioners in a memo, all to no avail, up until
2 such time as 1990 came, and the then commissioners in the
3 county redid the personnel manual, and they completely
4 dropped seniority off the radar screen. They didn't even
5 address it.

6 So my position was, well, that wasn't right
7 either. Walking away from potential problems wasn't
8 something I thought was the right thing. But that's what
9 the county did. So I, in the department pursued it, but to
10 no success. I had a chief at that time that wasn't
11 interested, didn't see it, didn't think it was important.

12 So again, my efforts to correct this potential
13 problem fell on deaf ears.

14 Q Okay. Who was the first chief? And you're
15 talking about chief of the Probation Department?

16 A The first chief that I dealt with was a man by
17 the name of Irvin Groninger who passed away on April the
18 25th of 1984. He was the first chief that I addressed this
19 with and didn't get any changes.

20 The second chief was Ken Bolze who took office
21 April 30th of 1984 and was there until July 31st of '96.
22 He didn't address the issue. Didn't want to address the
23 issue. Wasn't interested in the issue. So I wasn't
24 successful in getting his attention on this matter either.

25 Q Throughout your testimony about the seniority

1 issue, you've been saying I've talked to the commissioners,
2 I've talked to management, I've talked to the different
3 chiefs.

4 Is it just you that's really addressing these
5 issues of seniority at the time?

6 A Well, I don't know that it was just me. I
7 would say that there were probably others who were also
8 concerned, but whether they yielded to my so-called
9 seniority in the department, I don't know. I don't know
10 that other people didn't bring it up, but I really don't
11 know that answer.

12 Q Is it true that Ken Bolze retired in '96?

13 A That's true.

14 Q What happened with the issue after that?

15 A Well, on the issue of seniority, Mr. Bolze --
16 the word that he may retire, as I recall, came out of the
17 box in March or April of 1996, that he, in fact, might be
18 retiring in the summer of '96. So then the talk began all
19 over the office as to, well, gee, what's going to happen,
20 who's going to be the chief, and what kind of changes are
21 coming.

22 About that time also there were initially
23 rumors that the court may, in fact, support the splitting
24 of this Probation Department into two separate
25 departments. So that was a rumor there for a couple months

1 in 1996, while Mr. Bolze was still the chief of the single
2 department.

3 And then approximately June, July, and I don't
4 know exactly when, but both Joe and Gary -- I don't know
5 exactly when -- communicated with me about if we have a
6 split department, would I consider coming with Juvenile
7 Probation.

8 They came to me. They talked to me. They
9 wanted to know which way I was going to go, because again
10 more rumors including what would likely happen is the more
11 senior staff on the single department would probably get
12 first option to join whatever separate department they
13 wanted to do.

14 So anyway, Joe and Gary communicated with me
15 informally on several occasions, asking me if I would
16 consider -- because I had a lot of seniority in the single
17 department -- would I consider coming with Juvenile
18 Probation, if, in fact, that happened and we had two
19 departments.

20 Q Okay.

21 A Among the things that I mentioned to them, and
22 they were both aware of the seniority concern that I had
23 plus some other -- I can't remember offhand right now
24 anything specifically other than just general hopes to have
25 a, you know, good department, clean up some things that we

1 all agreed probably needed some attention.

2 But the issue of seniority came up, and
3 basically I just said to Joe and Gary, well, one of the
4 things that we have to address here is I want this
5 seniority thing fixed. And they both said they knew that
6 it was of interest to me. They understood the problem.
7 And there was no problem. You work on that, and that will
8 be our department's policy.

9 So through that, I did some drafts, and the
10 chief and Gary reviewed them, and eventually when we did
11 become a separate department, that's how the specific
12 policy was written and issued.

13 But more importantly before the final split of
14 the two departments, only in the rumor stage -- July,
15 August, before we knew, one, was there going to be two
16 departments, but more importantly who was going to be in
17 each department -- on this issue of seniority, I went and I
18 pulled in a number of less than senior personnel to
19 personally address, one-to-one, what I thought was going to
20 be the Juvenile Probation policy on seniority. Because I
21 thought it was important to be up front and honest and
22 thorough with the potential employees of this new
23 department.

24 Q What did you think would be the Juvenile
25 Probation Department's policy on seniority?

1 A Well, it was very simple. It closed two leaks
2 in the previous system. One, it addressed the issue of
3 full-time versus part-time. And two, it addressed the
4 specific issue, is your employment with the probation or is
5 it in the county. Those are the two leaks that the future
6 policy was going to close. So as to read, that seniority
7 for the department's purposes would involve full-time
8 continuous probation, period. That was it.

9 That closed both leaks. No question about
10 it. To the extent that this seniority policy would affect
11 an employee, there it was, black and white, clear,
12 everybody understood it.

13 Q You said you talked to a bunch of junior level
14 probation officers?

15 A That is correct.

16 Q About the concerns about whether or not this
17 would be something that would be acceptable to them or not,
18 is that correct?

19 A Well, that's basically correct. What I did is
20 I looked at the list of staff that were employed as
21 probation officers, and not knowing exactly where the
22 individual probation officers wanted to go if they had a
23 choice -- did they want to go adult, did they want to go
24 juvenile -- and knowing the importance of the issue of
25 seniority, I pulled a number of these people, including

1 Mrs. Varner one-to-one in my office, because I felt that
2 everybody that might end up in the Juvenile Probation
3 Department should know about this to the extent that it
4 could affect them. I thought it was important.

5 Q Just for clarity. One of the persons you
6 talked to was Ms. Varner?

7 A That is correct.

8 Q This is prior to the decision on the split of
9 juvenile and adult probation?

10 A It was approximately July, August. It was
11 before -- and you have to go back -- I want to explain
12 this. There was an informal period of time when we were
13 beginning to pick sides, so to speak. It's a little foggy
14 as to the exact date that happened. I say July, August,
15 but my discussions with potential employees in the separate
16 juvenile took place before the final people were in the
17 final spots.

18 Q Before the people selected which area they
19 were going to go to, either juvenile or adult?

20 A Exactly.

21 Q Okay.

22 A So what I basically -- this conversation with
23 the number of probation officers that I had it with just
24 basically said, listen, to the extent that it's of interest
25 to you, this is going to be -- this looks like it's going

1 to be the seniority policy in the Juvenile Probation
2 Department. Full-time, continuous probation experience.
3 And I clarified what that meant, everything it didn't mean,
4 et cetera, with the number of potential employees.

5 Q When you sat down and talked to Ms. Varner,
6 what was her reaction to this?

7 A When I brought this topic up with Barb, she
8 responded that she understood it, didn't have any problem
9 with it, sounded very fair to her. And that was the extent
10 of that one-to-one.

11 Q What would be the purpose -- and this is after
12 the seniority system is actually in place now, Juvenile
13 Probation Department -- what's the purpose of that
14 seniority system?

15 A Well, number one, frequency-wise, it's a tool
16 that is, on the one hand, probably not going to be put into
17 play very often.

18 Q Okay. What do mean by that?

19 A Well, you have a county that doesn't --
20 basically doesn't address seniority, but I felt that the
21 department needed to clean this potential issue up in case
22 down the road we would run into a situation that we'd have
23 a policy to cover.

24 For example, we're small staff-wise,
25 relatively small. So come deer season, for example, if 15